IC 8-4-16

Chapter 16. Consolidation of Certain Railroads

IC 8-4-16-1

Authority for operation

Sec. 1. Any railroad or other company organized under the laws of this state, or of this state and any other state or states, and owning or operating, or authorized by its charter to construct or acquire, a railroad, bridge or tunnel, either wholly within or partly within and partly without this state, may consolidate its capital stock, franchises and property with the capital stock, franchises and property of any other railroad, tunnel or bridge company or companies organized under the laws of this state, or of this state and any other state or states, or of any other state or states, or may merge or be merged into any such other company, whenever the two (2) or more railroads of the companies so to be consolidated or merged, their tunnels, bridges or branches or any part thereof, or the lines or routes of their roads if not constructed, shall or may connect either directly or over the intervening line or lines of any one (1) or more railroad companies, and any such consolidated or surviving company may thereafter construct or finish the construction of such line of railroad if not previously constructed, and may operate the same, subject to all the provisions of law applicable to such railroad company.

(Formerly: Acts 1937, c.59, s.1; Acts 1955, c.342, s.1.)

IC 8-4-16-2

Joint agreement; stocks and bonds

Sec. 2. Such consolidation or merger shall be made in the following manner:

(1) The directors of the companies proposing to consolidate or merge may enter into a joint agreement, under the corporate seal of each company, for the consolidation or merger of such companies, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new company in the case of a consolidation or of the company that is to survive in the case of a merger, the number and names of the directors and other officers thereof, and in case of a consolidation who shall be the first directors and officers of the new company and their places of residence, and either the amount of the authorized capital stock of the new or surviving company and the number and par value of the shares of which it is to consist or, if the new or surviving company is to issue shares without par value or shares of more than one (1) class, the statements required in such case by IC 8-4-1-1, and the manner of converting into the capital stock of the new or surviving company, or of otherwise disposing of, the capital stock of each company, the capital stock of which is to be so converted or disposed of, and how and when the directors shall be chosen, with such other details as they shall deem necessary to perfect such consolidation or merger; provided, however, that

in case of a merger it shall not be necessary for such joint agreement to contain the provisions above specified with regard to the directors and officers and capital stock of the surviving company unless, and then only to the extent that, changes in respect to such matters are to be made by such merger agreement. Such joint agreement may also provide for the issue of shares of the capital stock of the new or surviving company in exchange for or conversion of bonds or other evidences of debt of each, all or any of the companies so consolidated or merged and may prescribe the manner, terms, and conditions of effecting such exchange or conversion. But in no case shall the capital stock, bonds, and other evidences of debt of the company formed by such consolidation or of the surviving company in case of a merger, including any shares of its capital stock issued in exchange for or conversion of bonds or other evidences of debt as herein provided, exceed the sum of the capital stock, bonds, and other evidences of debt of the companies parties to such consolidation or merger, at the par value thereof or, in the case of stock without par value, the amount of the consideration received therefor or the amount of the stated capital applicable thereto if greater than the amount of such consideration. Nor shall any bonds or other evidences of debt be issued as a consideration for such consolidation or merger. If any of the companies parties to such consolidation or merger is a corporation organized under the laws of any other state or states, or of any other state or states and this state, the joint agreement herein provided for may fix the location of the principal office of the new or surviving company in any of said states.

(2) If the holders of outstanding shares of stocks of any of the companies parties to such joint agreement representing two-thirds (2/3) (or such greater proportion as the articles of association, consolidation, or merger under which such company was formed may require) of the voting power of all the stock of such company entitled to vote thereon shall by consent in writing, acknowledged as are deeds entitled to be recorded and endorsed upon or annexed to such joint agreement, signify their assent thereto, it shall be deemed and taken as the adoption of such agreement by and on behalf of such company. If such agreement shall not be assented to in writing by stockholders of any of the companies parties thereto, as provided in this section, such agreement shall be submitted to the stockholders of such company at a meeting thereof called for the purpose of considering the same. Due notice of the time and place of holding such meeting, and the object thereof, shall be given by such company to its stockholders by written or printed notices addressed to each of the persons in whose names the capital stock of such company stands on the books thereof, and delivered to such persons respectively or sent to them by mail if their postoffice address is known to the company, at

least thirty (30) days before the time of holding such meeting, and also by a general notice published at least once a week for four (4) weeks successively in some newspaper published in the city, town, or county where such company has its principal office or place of business. At such meeting of stockholders, such agreement shall be considered and a vote by ballot taken for the adoption or rejection of the same and if the votes of the holders of outstanding shares of stock of such company representing at least two-thirds (2/3) (or such greater proportion of said articles may require) of the voting power of all the stock of such company entitled to vote thereon, present and voting in person or by proxy, shall be for the adoption of such agreement, then that fact shall be certified thereon by the secretary or assistant secretary of such company, under the seal thereof. When such agreement shall have been consented to or adopted by stockholders of each of the companies parties thereto, as provided in this section, such agreement, or a certified copy thereof, shall be filed in the office of the secretary of state and shall thenceforth be deemed and taken to be the agreement and act of consolidation or merger of the companies parties thereto, and thereafter such companies shall be one (1) company by the name provided in such agreement, but such act of consolidation or merger shall not release such new or surviving company from any of the restrictions, liabilities, or duties of the several companies parties to such consolidation or merger.

(Formerly: Acts 1937, c.59, s.2.) As amended by P.L.62-1984, SEC.71.

IC 8-4-16-3

Vesting of rights, privileges, and franchises in new or surviving company; bond

Sec. 3. Upon the consummation of such consolidation or merger, all the rights, privileges, exemptions, and franchises of each of the companies, parties to the same, and all the property, real, personal, and mixed, and all the debts due on whatever account to any of them, as well as all stock subscriptions and other things in action belonging to any of them, shall be taken and deemed to be transferred to and vested in, or to remain vested in, such new or surviving company, without further act or deed; and all claims, demands, property, rights of way, and every other interest shall be as effectually the property of the new or surviving company as they were formerly of the companies parties to such consolidation or merger; and the title to all real estate, acquired by deed or otherwise, under the laws of this state, vested in any of such companies, parties to such consolidation or merger, shall not be deemed to revert or be in any way impaired by reason of this chapter or anything done by virtue thereof, but shall be or remain vested in the new or surviving company by virtue of such consolidation or merger. And it shall be lawful for any railroad company formed on or after June 7, 1937, by the consolidation of one (1) or more railroad companies organized under the laws of this

state, or under the laws of this state and any other state or states, with one (1) or more railroad companies or corporations organized under the laws of any other state, or the laws of this state and any other state or states, or in the case of a merger of any such companies for the surviving company, to issue its bonds for the purpose of paying or retiring any bonds theretofore issued by any of said companies parties to such consolidation or merger, or for any purpose and to the amount authorized by the laws of the state or states under which any of said companies was organized, and to secure the same by mortgage upon its real or personal property, or both, franchises, rights, and privileges, whether within or without this state, and subject to the remedies for the enforcement of the same under the laws of any of said states. Any such consolidated or surviving company shall have the same right as any other railroad company organized under the laws of this state to confer on the holders of any bonds issued by it the right to convert the same into capital stock of the company. Nothing in this chapter shall be construed to compel any bondholder to accept payment in whole or in part for any bond or bonds held by him or to surrender the same before they shall become due.

(Formerly: Acts 1937, c.59, s.3.) As amended by P.L.62-1984, SEC.72.

IC 8-4-16-4

Survival of actions; creditors' rights; liens; survival

Sec. 4. The rights of all creditors of, and all liens upon the property of, any of such companies, parties to such consolidation or merger, shall be preserved unimpaired, and the respective companies shall be deemed to continue in existence to preserve the same, and all debts and liabilities incurred by any of such companies shall thenceforth attach to such new or surviving company, and be enforceable against it and its property to the same extent as if incurred or contracted by it. No actions or proceedings in which any of said such companies is a party shall abate or be discontinued by reason of such consolidation or merger, but may be conducted to final judgment in the name of such company, or such new or surviving company may be, by order of the court, on motion substituted as a party.

(Formerly: Acts 1937, c.59, s.4.)

IC 8-4-16-5 Repealed

(*Repealed by P.L.1-1989, SEC.75.)*